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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

In re A.A. et al., Persons Coming Under
the Juvenile Court Law.

SACRAMENTO COUNTY DEPARTMENT OF HEALTH
AND HUMAN SERVICES,

Plaintiff and Respondent,

v.

T.L.,

Defendant and Appellant.

C060722

(Super. Ct. Nos.
JD227883, JD227884)

T.L., the mother of A.A. (a girl born in October 2006) and C.A. (a boy born in June 2005), appeals from juvenile court findings and orders entered at a combined jurisdictional and dispositional hearing. (Welf. & Inst. Code, §§ 300, subd. (f), 361.5, subd. (b), 395.) Appellant contends the juvenile court failed to ensure compliance with the Indian Child Welfare Act of 1978 (25 U.S.C. § 1901 et seq. (ICWA)). We vacate the orders and remand for further ICWA proceedings.

BACKGROUND

One morning in July 2008, the minors' four-year-old brother, J.A., was admitted to the hospital with severe lacerations of the liver and spleen, multiple rib fractures, and severe traumatic brain injury. At the same time, the minor C.A. was in the hospital with a super-infected bruise under one eye, a right adrenal hemorrhage of the abdomen, and three fractured ribs. J.A. was declared brain dead the day he was admitted. The children had been in the care of appellant and her live-in boyfriend, whom she had been dating for two months. The boyfriend had been left alone with J.A. and A.A. after appellant had taken C.A. to the hospital and did not return.

The next day, the Sacramento County Department of Health and Human Services (DHHS) filed separate dependency petitions pursuant to section 300, subdivisions (a) (serious physical harm), (b) (failure to protect), (e) (severe physical abuse), and (j) (abuse of sibling) for both minors. In September 2008, the petitions were amended to add additional allegations of injuries to C.A. and J.A.

Appellant denied any knowledge of Indian ancestry, but the father indicated possible Sioux, Cherokee, and Blackfeet ancestry. DHHS sent ICWA notice to the Bureau of Indian Affairs and the federally recognized Sioux, Cherokee, and Blackfeet tribes. The notice to the Blackfeet Tribe of Montana was sent to P.O. Box 746, Tahlequah, Oklahoma 74465. DHHS never received a response from the tribe regarding the father's or minors'

Indian ancestry, and the juvenile court subsequently found the ICWA did not apply.

At the contested jurisdictional and dispositional hearing, several allegations were dismissed, and the juvenile court sustained the remaining allegations, ordered out-of-home placement for both minors, and ordered reunification services only for the father.

DISCUSSION

The ICWA protects the interests of Indian children and promotes the stability and security of Indian tribes by establishing minimum standards for, and permitting tribal participation in, dependency actions. (25 U.S.C. §§ 1901, 1902, 1903(1), 1911(c), 1912.) Notice of the pending proceeding and the right to intervene must be sent to the tribe, or the Bureau of Indian Affairs, if the tribal affiliation is not known. (25 U.S.C. § 1912; § 224.2, subd. (a).)

Defendant's sole contention is the juvenile court and DHHS failed to comply with the notice provisions of the ICWA because notice to the Blackfeet Tribe was sent to the wrong address.¹ We agree.

The notice to the Blackfeet Tribe was sent to P.O. Box 746, Tahlequah, Oklahoma 74465, which is the address for the federally recognized United Keetoowah Band of Cherokee Indians. (71 Fed.Reg. 43797 (Aug. 2, 2006).) The address listed in the

¹ DHHS has declined to file a brief in opposition.

Federal Register for the Blackfeet Tribe is P.O. Box 588, Browning, Montana 59417. (71 Fed.Reg. 43804 (Aug. 2, 2006).)

Deficiencies in ICWA notice can be harmless error. (*In re Antoinette S.* (2002) 104 Cal.App.4th 1401, 1410-1411.) The error here is not harmless because there is no evidence the Blackfeet tribe was either notified, intervened, or expressly declined to participate. (*Nicole K. v. Superior Court* (2007) 146 Cal.App.4th 779, 783-784.) The return receipt for the notice is postmarked from Tahlequah, Oklahoma and signed by a representative from the United Keetoowah Band of Cherokee Indians. Since the Blackfeet Tribe had no opportunity to respond, the error was prejudicial.

DISPOSITION

The dispositional order is vacated and the matter is remanded with directions to order DHHS to furnish notice to the Blackfeet Tribe. If the tribe responds that the minors are Indian children or eligible for enrollment, the court shall proceed as required by the ICWA. If there is no response to the ICWA notice, or if the tribes or the Bureau of Indian Affairs determine the minors are not Indian children, the court shall reinstate the dispositional order.

_____, J.
NICHOLSON

We concur:

_____, P. J.
SCOTLAND

_____, J.
ROBIE